

AMENDED IN SENATE APRIL 1, 2004

**SENATE BILL**

**No. 1889**

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**Introduced by Committee on Environmental Quality (Senators Sher (Chair), Chesbro, Figueroa, Kuehl, McPherson, and Romero)**

March 1, 2004

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An act to amend ~~Section~~ *Sections 21159.24 and 21167* of the Public Resources Code, relating to environmental protection.

LEGISLATIVE COUNSEL'S DIGEST

SB 1889, as amended, Committee on Environmental Quality. Environmental protection: actions against a public agency.

(1) The existing California Environmental Quality Act (CEQA) requires a lead agency, as defined, to prepare, or cause to be prepared, and certify the completion of, an environmental impact report on a project that it proposes to carry out or approve that may have a significant effect on the environment, or to adopt a negative declaration if it finds that the project will not have that effect. Existing law requires every state agency, board, or commission, when approving or determining to carry out a project, to file a notice of that approval or determination with the Office of Planning and Research, and requires every local agency to file a notice of an approval or determination with the county clerk of each county in which the project will be located. If a person has made a written request to that public or local agency for a copy of the notice of approval or determination filed with the Office of Planning and Research or with the county clerk, existing law requires the agency to deposit in the United States mail, first class postage prepaid, within 5 days from the date of the agency's approval or determination a written copy of the notice addressed to the person.

This bill would require the public or local agency to make the deposit in the United States mail within 3 days from the date of the approval or determination. By imposing an increased level of service on local agencies, this bill would impose a state-mandated local program.

~~(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.~~

~~This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions. The bill would make other technical, nonsubstantive changes to CEQA.~~

*(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.*

*This bill would provide that no reimbursement is required by this act for a specified reason.*

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1     SECTION 1. *Section 21159.24 of the Public Resources Code*  
 2     *is amended to read:*  
 3     21159.24. (a) Except as provided in subdivision (b), this  
 4     division does not apply to a project if all of the following criteria  
 5     are met:  
 6     (1) The project is a residential project on an infill site.  
 7     (2) The project is located within an urbanized area.  
 8     (3) The project satisfies the criteria of Section 21159.21.  
 9     (4) Within five years of the date that the application for the  
 10    project is deemed complete pursuant to Section 65943 of the  
 11    Government Code, community-level environmental review was  
 12    certified or adopted.

(5) The site of the project is not more than four acres in total area.

(6) The project does not contain more than 100 residential units.

(7) Either of the following criteria are met:

(A) (i) At least 10 percent of the housing is sold to families of moderate income, or not less than 10 percent of the housing is rented to families of low income, or not less than 5 percent of the housing is rented to families of very low income.

(ii) The project developer provides sufficient legal commitments to the appropriate local agency to ensure the continued availability and use of the housing units for very low, low-, and moderate-income households at monthly housing costs determined pursuant to paragraph ~~(2)~~ (3) of subdivision (h) of Section 65589.5 of the Government Code.

(B) The project developer has paid or will pay in-lieu fees pursuant to a local ordinance in an amount sufficient to result in the development of an equivalent number of units that would otherwise be required pursuant to subparagraph (A).

(8) The project is within one-half mile of a major transit stop.

(9) The project does not include any single level building that exceeds 100,000 square feet.

(10) The project promotes higher density infill housing. A project with a density of at least 20 units per acre shall be conclusively presumed to promote higher density infill housing. A project with a density of at least 10 units per acre and a density greater than the average density of the residential properties within 1,500 feet shall be presumed to promote higher density housing unless the preponderance of the evidence demonstrates otherwise.

(b) Notwithstanding subdivision (a), this division shall apply to a development project that meets the criteria described in subdivision (a), if any of the following occur:

(1) There is a reasonable possibility that the project will have a project-specific, significant effect on the environment due to unusual circumstances.

(2) Substantial changes with respect to the circumstances under which the project is being undertaken that are related to the project have occurred since community-level environmental review was certified or adopted.

1 (3) New information becomes available regarding the  
2 circumstances under which the project is being undertaken and  
3 that is related to the project, that was not known, and could not  
4 have been known, at the time that community-level environmental  
5 review was certified or adopted.

6 (c) If a project satisfies the criteria described in subdivision (a),  
7 but is not exempt from this division as result of satisfying the  
8 criteria described in subdivision (b), the analysis of the  
9 environmental effects of the project in the environmental impact  
10 report or the negative declaration shall be limited to an analysis of  
11 the project-specific effect of the projects and any effects identified  
12 pursuant to ~~paragraphs~~ *paragraph* (2) or (3) of subdivision (b).

13 (d) For the purposes of this section, “residential” means a use  
14 consisting of either of the following:

15 (1) Residential units only.

16 (2) Residential units and primarily neighborhood-serving  
17 goods, services, or retail uses that do not exceed 15 percent of the  
18 total floor area of the project.

19 *SEC. 2.* Section 21167 of the Public Resources Code is  
20 amended to read:

21 21167. An action or proceeding to attack, review, set aside,  
22 void, or annul the following acts or decisions of a public agency  
23 on the grounds of noncompliance with this division shall be  
24 commenced as follows:

25 (a) An action or proceeding alleging that a public agency is  
26 carrying out or has approved a project that may have a significant  
27 effect on the environment without having determined whether the  
28 project may have a significant effect on the environment shall be  
29 commenced within 180 days from the date of the public agency’s  
30 decision to carry out or approve the project, or, if a project is  
31 undertaken without a formal decision by the public agency, within  
32 180 days from the date of commencement of the project.

33 (b) An action or proceeding alleging that a public agency has  
34 improperly determined whether a project may have a significant  
35 effect on the environment shall be commenced within 30 days  
36 from the date of the filing of the notice required by subdivision (a)  
37 of Section 21108 or subdivision (a) of Section 21152.

38 (c) An action or proceeding alleging that an environmental  
39 impact report does not comply with this division shall be  
40 commenced within 30 days from the date of the filing of the notice

required by subdivision (a) of Section 21108 or subdivision (a) of Section 21152 by the lead agency.

(d) An action or proceeding alleging that a public agency has improperly determined that a project is not subject to this division pursuant to subdivision (b) of Section 21080 or Section 21172 shall be commenced within 35 days from the date of the filing by the public agency, or person specified in subdivision (b) or (c) of Section 21065, of the notice authorized by subdivision (b) of Section 21108 or subdivision (b) of Section 21152. If the notice has not been filed, the action or proceeding shall be commenced within 180 days from the date of the public agency's decision to carry out or approve the project, or, if a project is undertaken without a formal decision by the public agency, within 180 days from the date of commencement of the project.

(e) An action or proceeding alleging that another act or omission of a public agency does not comply with this division shall be commenced within 30 days from the date of the filing of the notice required by subdivision (a) of Section 21108 or subdivision (a) of Section 21152.

(f) If a person has made a written request to the public agency for a copy of the notice specified in Section 21108 or 21152 prior to the date on which the agency approves or determines to carry out the project, then not later than three days from the date of the agency's action, the public agency shall deposit a written copy of the notice addressed to that person in the United States mail, first class postage prepaid. The date upon which this notice is mailed shall not affect the time periods specified in subdivisions (b), (c), (d), and (e).

~~SEC. 2. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund.~~

*SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service*

- 1 *charges, fees, or assessments sufficient to pay for the program or*
- 2 *level of service mandated by this act, within the meaning of Section*
- 3 *17556 of the Government Code.*

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